



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2004

Mr. Kevin P. Pagan
Deputy City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-3537

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200477.

The City of McAllen (the "city") received a request for information relating to a named city official, including correspondence, travel itineraries, and checks. You inform us that the city is releasing some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for that information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the city's receipt of the request for the information in question. The city may not withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who did not make a timely election under section 552.024 to keep the information in question confidential.

You inform us, and have submitted documentation demonstrating, that the submitted information relates to a city official who elected in writing to keep his home address and telephone number, social security number, and family member information confidential prior to the city's receipt of this request for information. Accordingly, the city must withhold this individual's home address and telephone number, personal cell telephone number, social security number, and family member information under section 552.117(a)(1). We note, however, that section 552.117 is not applicable to a cell or mobile phone number if a governmental body paid for the telephone service. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use).

We note that you also have marked other telephone numbers that appear in the submitted documents. We assume that the city also seeks to withhold these telephone numbers under section 552.117(a)(1). You do not inform us, however, of whether these are the telephone numbers of current or former city officials or employees who timely elected under section 552.024 to keep their home telephone numbers confidential. Therefore, we are unable to determine whether these additional telephone numbers are excepted from disclosure under section 552.117(a)(1). To the extent, however, that these additional numbers are the home telephone or personal cell phone numbers of current or former city officials or employees who timely elected confidentiality for their home telephone information under section 552.024, the city must also withhold these additional telephone numbers under section 552.117(a)(1). The city may not withhold these additional numbers if no timely request for confidentiality was made under section 552.024 or if they relate to cell or mobile telephone service that was provided at public expense. *See* Open Records Decision No. 506 at 5-7 (1988)

Next, we note that the city must withhold some of the remaining information under section 552.136.¹ This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

¹Unlike other exceptions to disclosure, this office will raise section 552.136 on behalf of a governmental body, as this section is a mandatory exception to disclosure that may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (1982).

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked account numbers that the city must withhold under section 552.136.

Lastly, we note that the remaining information also includes e-mail addresses that are subject to section 552.137.² This section provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

²This office also will raise section 552.137 on behalf of a governmental body. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (1982).

Gov't Code § 552.137. Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137 is not applicable to the types of e-mail addresses listed in section 552.137(c) or to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses in the submitted documents that are confidential under section 552.137(a). The city must withhold these e-mail addresses under section 552.137 unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure.

In summary: (1) the city must withhold the information relating to the named city official that is excepted from disclosure under section 552.117(a)(1); (2) the city may be required to withhold the other marked telephone numbers under section 552.117(a)(1); (3) the city must withhold the marked account numbers under section 552.136; and (4) the city must withhold the marked e-mail addresses under section 552.137 unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure. The city must release the rest of the submitted information. As we are able to make these determinations, we need not address section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

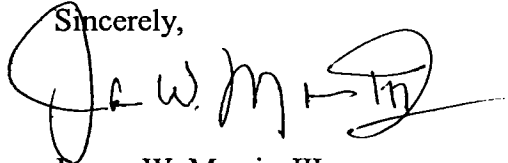
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 200447

Enc: Submitted documents

c: Dr. Anthony Rogers
8506 Chivalry
San Antonio, Texas 78254
(w/o enclosures)